

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Recommendations of the Independent Panel)	EB Docket No. 06-119
Reviewing the Impact of Hurricane Katrina)	WC Docket No. 06-63
on Communications Networks)	
)	

COMMENTS OF NENA

In an order released August 2, 2007, FCC 07-139, the FCC stayed for some two months Section 12.2 of the Rules requiring certain wire and wireless carriers to have:

an emergency backup power source for all assets that are normally powered from local	AC commercial power, including those inside central offices,
cell sites, remote switches	and digital loop carrier system remote terminals. ¹

The temporary stay was granted in response to a Motion by CTIA which claimed the adoption of the backup power requirement violated the Administrative Procedure Act (“APA”) and

failed to consider important aspects of the regulation, such as its relation to numerous federal, state, and local environmental, building, and health and safety codes that substantially limit the placement of batteries, generators, and fuel cells.

Motion, at 1. The FCC said the temporary stay

will provide the Commission with additional time to consider the issues raised by CTIA	in its Motion for Administrative Stay and to hear from other concerned parties on those issues.
--	---

¹ “LECs that meet the definition of a Class B company as set forth in §32.11(b)(2) of the Commission's rules and non-nationwide CMRS providers with no more than 500,000 subscribers are exempt from this rule.”

The National Emergency Number Association (“NENA”) answers the Commission’s call on behalf of its concerned member 9-1-1 authorities responsible for operating Public Safety Answering Points (“PSAPs”). This responsibility exists 24 hours a day every day of the year, and is felt particularly acutely during disasters such as Hurricane Katrina.

We leave to the FCC the defense of its actions under the Communications Act and the APA, statutes as to which the agency has special expertise. We would hope and expect that any gap in the administrative record that might have existed at the time of the decision² adopting Section 12.2 can be filled by the notice of the backup power issue contained in the stay order and the comments invited there.³

CTIA’s Motion (at 15) is careless in its reference to NENA Comments in the Katrina Panel docket. While those remarks chose to mention telephone central offices as emblematic of critical switching points in wire and wireless networks, any ambiguity was cured by our endorsement of NRIC Focus Group 1C Recommendation 7-7-5204 and its broader scope:

Service Providers, Network Operators and Property Managers should ensure availability of emergency/backup power (e.g., batteries, generators, fuel cells) to maintain critical communications services during times of commercial power failures, including natural and manmade occurrences (e.g., earthquakes, floods, fires, power brown/black outs, terrorism). The emergency/backup power generators should be located onsite, when appropriate.⁴

² *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, EB Docket No. 06-119, WC Docket No. 06-63, Order, 22 FCC Rcd 10541, ¶¶76-78 and Appendix B (2007) (*Katrina Panel Order*).

³ NENA is interested to hear from AT&T why it chose not to participate in the CTIA Stay Motion. (Motion, note 1)

⁴ Final Report, *Analysis of the Effectiveness of Best Practices Aimed at E9-1-1 and Public Safety*, December 2006, 59.

NENA's representative on the Katrina panel, Gil Bailey, urged that wireless sites should include generators with a minimum of five days' fuel supply and backup battery systems rated for a minimum of eight hours. As to the "onsite" location of generators, NENA suggested that "[i]n areas prone to flooding, such back-up power sources should be located to ensure that high water does not cause any damage."⁵ We thus anticipated the Motion's cavalier comment (at 20) that "eight hours worth of generator power does little good when an operational site is under water due to flooding."

NENA also must take issue with Motion's claim (at 31) that forced shutdown of non-compliant sites will threaten public safety:

Since wireless service is relied upon by private citizens to call 911 and for other public safety purposes, as well as by first responders for critical communications, any reduction in the scope of service will adversely and irreparably affect public safety.

Followed to its logical conclusion, this argument suggests that cellular providers would be immune from any disruptive regulatory discipline because so many 9-1-1 callers use wireless phones.⁶

While we doubt that Section 12.2 would be enforced against loss of power to "microwave ovens in company office kitchens and wall clocks in company conference rooms," NENA would not object to some clarification of the scope of the regulation and its possible limitation to "critical communications services" as called for in the NRIC VII Recommendation 7-7-5204 quoted above.

⁵ Comments, Docket 06-119, August 7, 2006, 5-6.

Respectfully submitted,

NENA

By _____

James R. Hobson

Miller & Van Eaton, PLLC

1155 Connecticut Avenue, N.W.

Suite 1000

Washington, D.C. 20036-4320

(202) 785-0600

September 11, 2007

ITS ATTORNEY

⁶ Some wireless carriers made an analogous argument in 1993, during the early consideration of 9-1-1 caller location rules, suggesting that cellular telephony, of itself, was such a boon to 9-1-1 access that precise caller location should not be required.